IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WA.No. 2062 of 2007

AGAINST THE JUDGEMENT IN WPC.5284/2007 Dated 27/06/2007

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APPELLANT: PETITIONER IN WP

CHANDY ABRAHAM,
AGED 57 YEARS, S/O LATE CHERIAN ABRAHAM,
RESIDING AT EL-JIREH, RIVER DRIVE,
KAKKANAD, COCHIN- 682030.

BY SR.ADV.SRI.K.P.DANDAPANI
SRI.MILLU DANDAPANI
SRI.R.PADMARAJ

RESPONDENTS: RESPONDENTS IN WP

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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM- 695001.

2. THE SPECIAL TAHSILDAR (LA),
COCHIN REFINERIES LTD., VYTTILA,
THRIPUNITHURA.

3. THE MANAGING DIRECTOR,
KINFRA, KINFRA HOUSE ANNEXE, ELANKON GARDENS,
VELLAYAMBALAM, THIRUVANANTHAPURAM- 695010.

BY SR.GOVERNMENT PLEADER SRI.D.ANIL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A. No. 2062 of 2007

Dated this the 11th day of September, 2007.

J U D G M E N T

H.L.Dattu, C.J.

The petitioner in W.P.(C).No.5284 of 2007 is the appellant in this appeal. He is the owner of 35 cents of land situate in Kakkanad village.

2. The acquiring authority had issued Section 4 (1) notification dated 28-9-2003 to acquire an extent of 116 acres of land for the purpose of establishing a 'smart city'. The land belonging to the appellant was also included in the said notification.

3. By the afore-said notification, the acquisitioning authority had called for objections from the persons interested in the land. The appellants and others had filed their objections, objecting to the proposal made in the preliminary notification. The acquiring authority, after considering the the objections filed by the parties interested in the lands intended to be acquired under Section 4(1) notification, had issued notification/declaration under Section 6 (1) of the Act and has published the same in Mathrubhumi Newspaper on 25-10-2004.

4. In the writ petition filed under Article 226 of the Constitution of India, the petitioner primarily sought for quashing of Section 4(1) notification and the proceedings before the Special Land Acquisition Officer in LAC No.130 of 2005. The learned Single Judge has rejected the writ petition and while doing so has issued certain directions to the acquiring authority. That is how the petitioner in the writ petition is before us in this appeal.

5. The learned senior counsel reiterates the contention raised and argued before the learned Single Judge at the time of hearing of the appeal for admission. The preliminary contention of the learned senior counsel is that, the award passed by the land acquisition officer is beyond the time limit prescribed under Section 11 A of the Land Acquisition At and therefore, the entire proceedings requires to be declared by this Court as bad, illegal and contrary to the provisions of the Land Acquisition Act.

6. Before we advert to the contention canvassed by learned senior counsel, it would be appropriate to notice that the learned Single Judge, after going through the records produced by the learned Government Advocate has come to the conclusion that the award in the instant case was passed on 7-10-2006 and therefore, the award is passed within the time prescribed under Section 11A of the Act.

7. Mr.Dandapani, learned senior counsel appearing for the appellant would contend that Section 9(3) notice was issued to the petitioner on 10-9-2006 and it was received by him only on 4-10-2006 and in that notice it was stated that he shall appear before the Special Land Acquisition Officer. It is further stated, that on 5.10.2006 the petitioner had appeared before the Land Acquisition Officer and on 6.10.2006 the objections were filed objecting to the proposals made in the preliminary notification and therefore, it is contended that the respondent could not have passed any award on 7-10-2006. Alternatively, the learned counsel would contend that the draft

award that is found in the records does not bear the date of the draft award and that only means that the award was not passed on 7-10-2006 and on this ground the learned counsel would contend, that, since the award is not passed within the time stipulated under Section 11A of the Act, the entire acquisition proceedings commencing from issuing of notification under Section 4(1) of the Act requires to be struck down by this Court.

8. We are not impressed by the submission made by the learned counsel for the appellant since it has no merit. We say so for the reason that draft award requires to be issued in Form 10 prescribed under Rule 12(1) of the Kerala Land Acquisition Rules. The draft award form does not contain mentioning of any date. If we look up other forms prescribed under the Rule, there is a mention with regard to the place of issuing of the notices and the date when such notices are issued. Therefore, it is an indication in Form 10 itself that the date on which the draft award is passed need not be mentioned by the Special Land Acquisition Officer.

9. Even otherwise also, it is not the case of the appellant before us that the draft award that is passed is a fabricated document. It is his presumption that within a span of one day, the respondent could not have passed the final award on 7-10-2006. To support that stand, a contention is canvassed that, the appellant appeared before the authorities only on 5-10-2006 and filed his objections on 6-10-2006 and that the authorities could not have passed any award on 7-10-2006. All these assertions are based on

mere assumptions, presumptions and surmises, which has no basis whatsoever. The official records produced by the learned Government Advocate would clearly indicate that the award was passed on 7-10-2006 and we have no reason whatsoever to suspect the genuineness of the records maintained and produced by the Land Acquisition Officer. That only means that the award passed by the Land Acquisition Officer is within the time stipulated under Section 11A of the Act. Therefore, in our opinion, the argument canvassed by the learned senior counsel for the appellant does not have any merit whatsoever. Since the award has been passed within the time limit prescribed under Section 11A of the Act, the acquisition proceedings need not be quashed by us.

10. Secondly, under the aforesaid notification, the State Government intends to acquire large extent of land. The appellant is only the owner of a very small extent of land. Since the acquisition proceedings is for public purpose, the technical objections so canvassed by the appellant need not be taken serious note of by us. Even on this ground also the appeal requires to be rejected and accordingly the following:-

O r d e r

Writ Appeal is rejected. No order as to costs.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS